

IN THE MATTER OF

THE BOARD OF COMMISSIONERS

OF CARROLL COUNTY

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 99-38

OPINION

This is an appeal by the Carroll County Commissioners of the denial of certain requested non-recurring cost exclusions from the calculation of the maintenance of effort requirement for the fiscal year 2000 operating budget for the Carroll County Public School System.

BACKGROUND

In 1996 the Maryland General Assembly amended § 5-202 of the Education Article describing the calculation for the State and the local share of basic current expense funds for the local boards of education. One of the amendments involved the calculation of the local maintenance of effort requirement and authorized the exclusion of a non-recurring cost that is supplemental to the regular school operating budget if the exclusion qualifies under regulations adopted by the State Board. In November, 1996, the State Board issued emergency regulations followed by the adoption of permanent regulations in March, 1997 that govern the calculation of the non-recurring cost exclusion to the maintenance of effort requirement. The regulations limit qualifying non-recurring costs to six categories:

- (a) Costs to establish new computer laboratories that include the cost for equipment, furniture, wiring, hardware, software, space renovations, and the initial up-front cost for staff development, and training but not ongoing costs such as maintenance, staff salaries, staff development, and training;
- (b) Costs for new technology that include the cost for equipment, furniture, wiring, hardware, software, space renovations, and the initial up-front cost for staff development, and training but not ongoing costs such as maintenance, staff salaries, staff development, and training;
- (c) New instructional program start-up costs that include the cost for equipment, furniture, wiring, hardware, software, space renovations, textbooks, manipulatives, staff development, and training;

- (d) Books other than classroom textbooks to establish a new library collection and new books required in new and renovated schools;
- (e) Capital items with a useful life of 5 years or more that include the cost to acquire fixed assets other than land and buildings; and
- (f) Other unique one-time costs that the local board and county mutually agree to be one-time expenditures.

COMAR 13A.02.05.03A(2).

In accordance with the procedures set out in these regulations, by letter of March 26, 1999, Mr. Steven D. Powell, Director of the Department of Management and Budget for Carroll County, notified the State Board through the State Superintendent that Carroll County requested \$4,006,495 of the Carroll County Board of Education's appropriation request of \$95,700,690 to be classified as non-recurring costs. By letter of April 28, 1999, Mr. Thomas K. Lee, Assistant State Superintendent for Business Services, Maryland State Department of Education, notified Mr. Powell that the approved amount of the qualifying cost exclusions from the regular school operating budget for Carroll County Public Schools for FY 2000 was \$3,367,739, provided that the baseline amount for maintenance of effort is satisfied.

On May 6, 1999, the Board of Commissioners of Carroll County filed a written appeal to the State Board of Education challenging the denial of \$638,756 as qualifying non-recurring cost exclusions. By letter of May 12, 1999, Mr. Powell faxed a two-page document to the State Board listing all of the remaining items for which the county was requesting qualification as non-recurring cost exclusions.

The President of the Board of Education of Carroll County by letter dated June 8, 1999, notified the State Board that the superintendent and the Board of Education of Carroll County accepted the determination of the approved exclusions as presented in Mr. Lee's letter of April 28, 1999 to Mr. Powell. The Board President further noted that it is "the position of the Board that the appropriate agency to determine what is considered a non-recurring cost, under the Annotated Code of Maryland, Education Article, § 5-202 and the applicable Maryland State Board of Education regulation is the Maryland State Board of Education."

At oral argument before the State Board on June 29, 1999, and subsequently by letter to the State Board President, Mr. Powell clarified the amount and basis of requested exclusions. He indicated that the Commissioners were withdrawing a management information system cost item of \$87,200; a maintenance contract cost item of \$192,456; and certain miscellaneous items amounting to \$129,900. Mr. Powell further indicated that the Commissioners were substituting

as a new request the amount of \$342,000 for an equipment cost item exclusion.¹ Mr. Powell also requested that the State Board consider redefining the terms “maintenance” and “equipment” as they apply to qualifying nonrecurring costs including certain requests made by the Carroll County Commissioners.

ANALYSIS

Since the 1996 enactment of legislation authorizing non-recurring cost exclusions from the calculation of the maintenance of effort requirement, the State Board has issued two opinions interpreting its regulations that apply to such determinations. In Opinion No. 97-12, *In the Matter of County Commissioners of Frederick County*, the State Board interpreted and applied the meaning of COMAR 13A.02.05.03A(2)(e): “Capital items with a useful life of 5 years or more that include the cost to acquire fixed assets other than land and buildings” to cost exclusions requested by Frederick County. In Opinion 97-24, *In the Matter of the Montgomery County Board of Education*, the State Board interpreted and applied the meaning of “new instructional program start-up costs,” in subsection (2)(c), and the meaning of books for new libraries and new schools in subsection (2)(d), to certain requested cost exclusions made by the Montgomery County Council.

In *Frederick County*, Opinion No. 97-12, the State Board relied upon the definitions of “Capital Outlay” and “Maintenance of Plant” that are found in the expenditure account definitions of the Financial Reporting Manual for Maryland Public Schools (1997 Edition), incorporated by reference in COMAR 13A.02.01.02C, as the basis for the determination of what constitutes a qualifying non-recurring cost exclusion. We continue to find these definitions appropriate. Applying these definitions to Carroll County’s requested cost exclusions for replacement of windows, relocation of sidewalk and replacement of curtains with mini blinds, we find these are maintenance items that do not qualify as nonrecurring costs.

We note that last year similar items were approved by MSDE staff as qualifying nonrecurring costs. No appeal was taken from those approvals. However, based on the definitions of Capital Outlay and Maintenance of Plant as well as the application of those definitions to the items at issue in *Frederick County*, Opinion No. 97-12, the State Board would have reversed the approvals given to the Carroll County requests by MSDE staff. Nonetheless, in order not to reopen the FY 1999 maintenance of effort calculations, the State Board will not require adjustments for the incorrect FY 1999 approvals.

Finally, with respect to the \$342,000 equipment cost item request, the record discloses that Mr. Powell submitted that request by letter dated July 7, 1999. In accordance with the procedures set out at COMAR 13A.02.05.03B, requests for nonrecurring cost exclusions must be submitted by the local government between January 1 and March 31 of each year. In

¹The equipment cost item is found on page 49-I of the Carroll County Board of Education budget book for FY 2000.

this case, because the \$342,000 equipment cost item request was not submitted in a timely fashion, we deny the request.

CONCLUSION

For these reasons, we affirm the decision made by MSDE staff that the approved amount of qualifying cost exclusions from the regular school operating budget for Carroll County Public Schools for FY 2000 is \$3,367,739.

Walter Sondheim, Jr.
President

Edward Andrews
Vice President

Raymond V. Bartlett

JoAnn T. Bell

Philip S. Benzil

ABSTAIN*

Reginald Dunn

George W. Fisher, Sr.

Marilyn D. Maultsby

Judith McHale

ABSTAIN*

Edward Root

John Wisthoff

* Reginald Dunn and Edward Root, newly appointed members of the State Board of Education, did not participate in the deliberation of this appeal.

August 24, 1999